

Terms & Conditions

1. In these Terms and Conditions:

- a) "Contract" means all written documentation relating to the Works and can include, but is not limited to the Quotation, the Terms and Conditions, any written or formal contract and any written variation. The Contract comprises any and all combinations of such written documents.
- b) "Contract Price" means the amount, inclusive of GST, which the Customer must pay to the Supplier under this Contract and includes any amounts in addition to this Contract, including, but not limited to, all variations as agreed to by the Customer & the Supplier.
- c) "Customer" means the person, business or company as defined on the Contract and includes any trust, business entity or entity wholly or substantially controlled by the Customer, formed on, prior to and after the date of this Contract.
- d) "Guarantor" means the person (or persons), named on the Contract who agree to be liable for the debts of the Customer.
- e) "Seller" means Total Garden Solutions Pty Ltd as trustee for the Chenhall Investment Trust trading as Total Garden Solutions.
- f) "Total Garden Solutions" means Total Garden Solutions Pty Ltd as trustee for the Chenhall Investment Trust trading as Total Garden Solutions.
- g) "Goods and services" means the goods, plants, materials and/or services supplied by Total Garden Solutions to the Customer.
- h) "Parties" means the Customer and Total Garden Solutions collectively.
- i) "Practical Completion" means the stage of the Works when the Works are completed in accordance with the Contract.
- j) "Property" means the land in which the Works are carried out by Total Garden Solutions.
- k) "Works" means the whole of the Works, whether landscaping or garden maintenance in nature, to be carried out by Total Garden Solutions under the Contract and includes all Goods and Services supplied and includes all variations.

2. Interpretation:

- a) The Parties agree that: The Contract comprises the entire agreement between the Parties in relation to the Works performed by Total Garden Solutions. It supersedes all prior communications, negotiations, representations and agreements, whether oral and written, and may only be altered in writing and signed by both Parties.
- b) The customer warrants that it has not relied on any statements or representations not contained in this Contract.
- c) If any provision in these Terms and Conditions are void, illegal or otherwise unenforceable,

then the Parties may amend that provision so as to achieve the intention of the Parties without illegality or that said provision may be severed from these Terms and Conditions at the discretion of Total Garden Solutions.

- d) These Terms and Conditions may be varied or added to from time to time by Total Garden Solutions by reasonable notice in writing or as otherwise required by law.
- e) This Contract shall be interpreted and enforced in accordance with the laws of the State of Queensland and the Parties agree that any dispute between Parties in relation to the Contract will be heard by the Court of competent jurisdiction located in the district closest to Total Garden Solutions business premises.
- f) To confirm acceptance of a Contract, the Customer must sign the Contract and pay the required deposit. By signing the Contract and paying the deposit it is acknowledged that both the works to be carried out and the price for the works are being accepted.

3. Payments:

- a) All deposits are non-refundable.
- b) In consideration for Total Garden Solutions in supplying Goods and Services and performing Works pursuant to the Contract and/or variations, the Customer will pay Total Garden Solutions a deposit equivalent to; 10% of the Contract Price for Works less than \$3,300, 10% of the Contract Price for Works between \$3,300 and \$20,000 and 5% of the Contract Price for Works over \$20,000; on the day that the Contract is accepted by the Customer and prior to commencement of Works.
- c) For Works Contracted over \$10,000 a progress payment schedule will be provided and Works will not proceed past each scheduled stage until payment is received.
- d) Customer satisfaction of project progress and query clarification if applicable is verified as each stage payment is made.
- e) In the event of dissatisfaction, the customer should notify Total Garden Solutions immediately to ensure that rectification is possible during works.
- f) When the Works are complete (as determined by Total Garden Solutions) Total Garden Solutions will issue a Tax Invoice to the Customer for the Contract Price for all Works pursuant to the Contract plus any variations, less any payments made. Payment of the balance of such invoice is to be paid by the Customer upon receipt of invoice.
- g) If payment is not received by Total Garden Solutions by the Payment Dates then Total Garden Solutions will be entitled to recover from the Customer: The full outstanding amount of the Contract Price; The full outstanding amount of all variations and charge fees (if applicable); Interest on the outstanding amounts of the Contract Price and all variations and charge fees (if applicable) at a rate of 12% per annum calculated daily; and all collection fees and costs incurred by Total

Garden Solutions including, but not limited to, all legal fees and costs on an indemnity basis and any debt collection commissions.

- h) Where Total Garden Solutions is providing regular or irregular garden maintenance services with a contract amount less than \$500, the Customer agrees to pay the full contract amount upon receipt of an invoice provided by Total Garden Solutions which will generally be on/after the date the service has been provided.
- i) Total Garden Solutions is unable to obtain refunds on plants & materials and therefore does not provide refunds on plants & materials to the client.
- j) Please note Total Garden Solutions accepts payments via cash or direct bank deposit. Bank account details can be found on both the Contract and the Tax Invoice provided by Total Garden Solutions. Customers wishing to make payment via cheque will be accepted at the discretion of Total Garden Solutions. Any fees and charges associated with dishonoured cheques will be passed on to the Customer and the original payment plus the fees will only be accepted via direct bank deposit.
- k) At the Sellers discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Payments Act 2004 may apply.

4. Suitability of Goods and Services

- a) Total Garden Solutions makes no warranty as to the suitability of the Goods and Services and the works for the purpose in which they are required by the Customer unless the Customer has provided Total Garden Solutions with full details in writing of the conditions in which the Goods and Services and the works will be operating prior to the Customer's acceptance of this Contract. If the Customer does not provide Total Garden Solutions with such written notice then the Customer has satisfied itself as to the suitability of the works and the Goods and Services for the purpose for which they are required by the Customer and Total Garden Solutions shall not be liable for any loss or damage directly or indirectly should the Works and the Goods and Services not be suitable for that purpose.

5. Liability

- All care will be taken however the Seller will not be responsible or liable for damage caused as a result of the Seller undertaking the Works, other than for damage caused as a direct result of the Seller's negligence. Such damage may include, but is not limited to any of the following:
- a) overhead powerlines, underground pipes, water mains, concrete driveways or pathways as a result of machinery travelling over them;
 - b) property including but not limited to broken glass resulting from stones thrown up by a lawnmower or whippersnapper;
 - c) damage to property by a third party such as a supplier delivering turf to the Customer's

property which results in damage to the Customer's fence; or

- d) underground hazards, obstructions or services which were not made known to the Seller in writing or were apparent on visual inspection of the Customer's property.

6. General

- a) The client shall provide water and electricity at no charge to Total Garden Solutions.
- b) Water availability and water pressure may determine additional charges for a water truck which may not have been included in the original estimate/quotation.
- c) The client shall provide access to the site during normal working hours and storage space for materials for the duration of the Works.
- d) Delays caused by other companies on site may cause work to be rescheduled and charges may apply in certain circumstances.
- e) Total Garden Solutions has a minimum of ½ hour charge out rate where called to site and unable to perform the requested works. Weekend and public holiday rates apply also.

7. Plants

- a) Total Garden Solutions makes no warranty on plants supplied (or their suitability), the Customer must go directly to the nursery for all warranties.
- b) Total Garden Solutions will not replace plants killed by animals, rodents, insects, mechanical damage, neglect, weather elements eg. Rain/frost, natural disasters or any other reason; over which Total Garden Solutions has no control.
- c) An additional labour charge for plant removal and reinstallation will apply.
- d) Any repairs/replacements made to any installation after the completed project will be made at the Customers expense.
- e) Any repairs made to any installation by any party other than Total Garden Solutions voids any warranties offered by Total Garden Solutions or the nursery.

8. Lawn Installation

- a) At the conclusion of the Works it is the responsibility of the Customer to ensure that the turf is watered every day for 2 weeks after the laying of the turf.
- b) Total Garden Solutions cannot give warranties on turf supplied; the Customer must go directly to the turf farmer if the turf dies within the 2 week period.
- c) Once seeded or turf is laid, Total Garden Solutions has no control over the weather, watering or other cultural practices of the Customer. Therefore, Total Garden Solutions cannot guarantee the germination rate of seed or turf, or general success of the seeding or turf. Repairs done on a seeding or turf project are done at the expense of the Customer.

- d) Total Garden Solutions does not accept responsibility for settling due to new construction, or any other excavations not performed by or supervised by Total Garden Solutions.

- e) Total Garden Solutions have no control over weeds that may come up through the Customer's turf, garden or pathways. It is the Customer's responsibility to set up a maintenance program to ensure that any weeds are killed or poisoned to keep the Customer's project looking clean and weed free.

9. Variations

- a) Variation for Latent Conditions, Law and circumstances beyond the control for Total Garden Solutions.

- i) Total Garden Solutions will make reasonable efforts to complete the Contract as agreed to between the Parties however the Customer acknowledges and accepts that circumstances may arise that may prevent the Works to be conducted by Total Garden Solutions exactly as planned due to existence of Latent Condition, legal requirement or a circumstance beyond the control of Total Garden Solutions.

- ii) Total Garden Solutions shall provide a written notice to the Customer describing the Latent Condition, legal requirement, or circumstance beyond its control which shall require a variation of the Works, a description of the Works required to overcome the Latent Condition, legal requirement or circumstance beyond its control and an estimate of the additional costs.

- iii) Total Garden Solutions shall take all reasonable attempts to have the Customer sign the notice. If the Customer fails to consent or sign the notice (within 2 days of receiving the notice) Total Garden Solutions may terminate this Contract and retain any monies paid by the customer and the Customer shall be liable for any and all loss, costs, expenses and damages incurred by Total Garden Solutions up until the date of termination.

- b) Variation by agreement

- i) Any variation or addition to the contracted Works at the Customers request must be confirmed in writing and signed by both Parties stating the nature of the variation, the estimated additional costs to attend to the variation.

10. Permits

- a) Customer is responsible for securing all necessary permits and approvals and warrants that all necessary permits and approvals have been obtained from the appropriate authority. Should such a warranty prove to be false and Total Garden Solutions suffers loss and damage as a result, the Customer agrees to indemnify Total Garden Solutions for any such loss and damage suffered.

11. Estimates/Quotes

- a) An estimate of the number of days to complete the Works and an expected start date are

provided by Total Garden Solutions as a courtesy. There may be delays in the beginning date and the completed date due to poor weather or other circumstances beyond the control of Total Garden Solutions. Should such a delay occur, the Customer forgoes any claim pursuant to the Contract or at law it may have against Total Garden Solutions.

- b) Total Garden Solutions will make reasonable efforts to accurately estimate the fees and costs of the materials needed and the description of the Works required to complete the Contract. However, the Customer acknowledges that there may be differences between the estimated price and the Contract Price.

- c) If the estimated price is less than the Contract Price:- Total Garden Solutions shall provide a written notice (Variation) to the Customer describing the difference between the estimated price and the Contract Price, the reasons for the difference and an estimate of additional costs.

- d) Total Garden Solutions shall make all reasonable attempts to have the Customer sign the notice. If the Customer fails to consent or sign the notice (within 2 days of receiving the notice) Total Garden Solutions may terminate this Contract and retain any monies paid by the Customer and the Customer shall be liable for all loss, costs, expenses and damages incurred by Total Garden Solutions up until the date of termination.

- e) Once the notice is signed by the customer, any additional amount will be added to the final tax invoice issued by Total Garden Solutions and the total amount on the tax invoice will become due and payable by the Customer in accordance with these Terms and Conditions.

- f) Quotes/Estimates do not include excavation into subterranean rock and the necessity to excavate in such conditions may alter prices quoted.

- g) Prices are subject to market increases and/or errors.

12. Practical Completion

- a) Upon Practical Completion of the Works, Total Garden Solutions will provide the Customer with a final tax invoice.

- b) Upon practical substantial completion the responsibility for the care and watering of all plants, lawns etc is handed over to the client and will require regular attention until established.

- c) Maintenance is not included in the contract unless specified.

13. Suspension of Works

- a) Total Garden Solutions may, without prejudice to any of Total Garden Solutions rights under this Contract or at law, suspend performance of the Works where the Customer: a) fails to make any payments required by this Contract as and when required by this Contract; b) unreasonably fails to consent to any variation

or fails to sign a variation document provided by Total Garden Solutions c) takes possession of any part of the Works without the prior written consent of Total Garden Solutions prior to paying the Contract Price in full; d) commits an act of bankruptcy, is wound up, placed into receivership or voluntary administration or enters into an agreement for the benefit of the Customer's creditors e) is in breach of any term of this contract.

b) Total Garden Solutions will immediately notify the Customer in writing of the suspension and the grounds for suspension. The parties acknowledge that Total Garden Solutions may, at its discretion, terminate the Contract.

14. Retention of Title

a) The parties agree that: i) Risk of the Goods and Services will pass immediately to the Customer upon supply by Total Garden Solutions; ii) Title to the Goods and Services will only pass to the Customer when the Customer has paid for the Goods and Services along with any costs and other expenses imposed by this Contract in full.

b) The parties agree that while Title to the Goods and Services has not passed to the Customer, the Customer will hold those goods as the fiduciary agent and bailee and thereby the Customer: i) owes Total Garden Solutions duties and liabilities as the fiduciary agent and bailee; ii) will not attempt to convey Title to the Goods and Services to any third party unless otherwise agreed by Total Garden Solutions in writing; iii) Must not prevent Total Garden Solutions from entering the Customer's property to take possession of the Goods and Services.

c) Total Garden Solutions is immediately entitled to enter the Property to take possession of the Goods and Services whilst Title has not yet transferred to the Customer in the event the Customer: i) fails to make any payments required by this Contract as and when required by this Contract; or ii) Unreasonably fails to consent to any variation or fails to sign a variation document provided by Total Garden Solutions; or iii) Takes possession of any part of the Works without prior written consent of Total Garden Solutions prior to paying the Contact price in full; or iv) Commits an act of bankruptcy, is wound up, being placed into receivership or under administration, enters into an arrangement for the benefit of its Creditors; or v) is in breach of any terms of this Contract.

d) The Customer will indemnify Total Garden Solutions for any claim made by any third party against Total Garden Solutions as a result of Total Garden Solutions entry on the Property and taking possession of the Goods and Services.

e) If the Customer sells the Goods and Services in contravention of this Contract, then the Customer: i) Holds the proceeds of the sale on trust as agent for Total Garden Solutions immediately when they are received; and ii) Must pay the proceeds of sale of the Goods and Services into a separate bank account as trustee for Total Garden Solutions.

f) Notwithstanding the provisions in this Clause and notwithstanding property in the Goods and Services not yet passed herein to the customer, Total Garden Solutions is entitled to maintain an action against the Customer to recover the Contract Price and all other costs in accordance with Clause 3(f) and 3 (g) herein.

15. Guarantee

a) The Guarantor/s request Total Garden Solutions to make supply to the Customer under this Contract, and agree that they receive valuable consideration by Total Garden Solutions agreeing to do so.

b) In consideration of Total Garden Solutions agreeing to make supply to the Customer under this Contract the Guarantor/s jointly and severally guarantee to Total Garden Solutions the due and punctual performance by the Customer of the Customers obligation under this Contract.

c) Should the Customer fail to fulfill its obligations under this Contract, including but not limited to, make any payments required by this Contract as and when required by this Contract, then the Guarantor/s guarantees Total Garden Solutions to make those payments on the Customer's behalf.

d) The Guarantor/s indemnify Total Garden Solutions in relation to the performance of this Contract, and agree their liability to Total Garden Solutions is the same as if each Guarantor alone was the Customer, and all transactions between Total Garden Solutions and the Customer with transactions between Total Garden Solutions and the Guarantor/s.

e) This Guarantee and Indemnity is non revocable and continuing, and is not effected by any delay or failure by Total Garden Solutions to strictly enforce its rights against the Customer or the Guarantor/s, nor any waiver by Total Garden Solutions of any of its rights against the Customer or the Guarantor/s except for the extend specifically waived.

16. Security

a) The Customer and Guarantor/s hereby agree to: i) charge all their beneficial interest (freehold and leasehold) in real property held now or in the future to secure the obligations owed to Total Garden Solutions under this Contract; ii) upon demand being made by Total Garden Solutions, the Customer and Guarantor/s will immediately execute a mortgage in registerable form for any sum then outstanding to Total Garden Solutions pursuant to this Contract and /or consents to a Caveat being lodged over all real properties held by the Customer and the Guarantor/s now or in the future to secure the interest of Total Garden Solutions pursuant to this equitable mortgage.

b) In the event the Customer and Guarantor/s fail to execute a document in accordance with Clause 15(a), then the Customer and Guarantor/s hereby irrevocably and by way of security appoint Total Garden Solutions or a solicitor engaged by Total Garden Solutions to be the true and lawful attorney to execute and register any such instrument as described in

Clause 15. For the purposes of this appointment, the Customer and Guarantor/s authorize the attorney appointed by this Clause to enter into conflict transactions within the meaning of the Power of Attorney Act 1998.

17. Termination

a) Termination of Contract by Customer: i) to end this Contract, the Customer must give Total Garden Solutions a written notice by emailing before midnight the first business day after the Customer has signed this Contract. ii) The date of termination will be deemed to be the following business day after notice is provided by the Customer in accordance with (i) above. iii) If the Contract is ended under this Clause Total Garden Solutions is entitled to retain any monies paid by the Customer to Total Garden Solutions and to recover any loss, costs, expenses and damages incurred by Total Garden Solutions in connection with the works, and the termination.

c) Termination of Contract by Total Garden Solutions: i) Total Garden Solutions may terminate this Contract immediately by providing written notice to the Customer if the Customer: 1) fails to make any payments required by this Contract as and when required by this Contract; 2) unreasonably fails to consent to any variation or fails to sign a variation document provided by Total Garden Solutions; 3) takes possession of any part of the works without the prior written consent of Total Garden Solutions prior to paying the Contract Price in full; 4) commits an act of bankruptcy, is wound up, placed into receivership or voluntary administration, or enters into an agreement for the benefit of the Customers creditors; 5) is in breach of any term of this Contract.

d) If the Contract is terminated by Total Garden Solutions, Total Garden Solutions is entitled to retain any monies paid by the Customer and to recover from the Customer all loss, costs, expenses and damages in connection with the Works conducted by Total Garden Solutions, and the termination.

e) Total Garden Solutions is entitled to remove from the Property, and to retain, all materials, goods, plants, retaining walls and equipment previously provided by Total Garden Solutions.

18. Enforcements of Rights

a) The failure of Total Garden Solutions to enforce any right accruing under this Contract shall not be construed as a waiver of a subsequent right of Total Garden Solutions to enforce the same or any other right, term or condition.

19. Schedule

a) The Guarantor/s confirm it has read all the above terms and conditions and agrees to be bound by the same as evidenced by the Guarantors execution herein under.

b) For more information please contact us on 0405 422 108 Total Garden Solutions Pty Ltd as trustee for the Chenhall Investment Trust trading as Total Garden Solutions.